

PLANNING COMMISSION AGENDA
CITY OF NEWPORT BEACH
COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD
Thursday, May 5, 2011
Regular Meeting - 6:30 p.m.

EARL MCDANIEL
Chairperson

ROBERT HAWKINS

FRED AMERI

CHARLES UNSWORTH

MICHAEL TOERGE

BARRY EATON

BRADLEY HILLGREN

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

JAMES CAMPBELL, Acting Planning Director

MICHAEL TORRES, Deputy City Attorney

GREGG RAMIREZ, Senior Planner

TONY BRINE, City Traffic Engineer

ROSALINH UNG, Associate Planner

ERIN STEFFEN, Planning Technician

GAYLENE OLSON, Department Assistant

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. Staff reports or other written documentation have been prepared for each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200. The agendas, minutes and staff reports are also available on the City's web site at: <http://www.newportbeachca.gov>.

This committee is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

NEWPORT BEACH PLANNING COMMISSION AGENDA
Council Chambers – 3300 Newport Boulevard
REGULAR MEETING
Thursday, May 5, 2011
6:30 p.m.

- A. CALL TO ORDER**
- B. PLEDGE OF ALLEGIANCE**
- C. ROLL CALL**
- D. PUBLIC COMMENTS**

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to 3 minutes. Before speaking, please state your name for the record and print your name on the tablet provided at the podium.

- E. REQUEST FOR CONTINUANCES**
- F. CONSENT ITEMS**

ITEM NO. 1 Minutes of April 21, 2011

ACTION: Approve and file.

ITEM NO. 2 In-Lieu Fee Credit Irvine Company

SUMMARY: Establishment of In-Lieu Fair Share Fee Credit toward North Newport Center for Construction of a Third Eastbound Left Turn Lane on San Joaquin Hills Road at MacArthur Boulevard

CEQA

COMPLIANCE: This activity is not subject California Environmental Quality Act (CEQA) as the action is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.b.3 of the CEQA Guidelines).

ACTION: Approve and file.

- G. PUBLIC HEARING ITEMS**

ALL TESTIMONY GIVEN BEFORE THE PLANNING COMMISSION IS RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE MINUTES ON ALL ITEMS. (Red light signifies when three minutes are up; yellow light signifies that the speaker has one minute left for summation.) Please print only your name on the pad that is provided at the podium.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours.

ITEM NO. 3 Via Lido Amendments (PA2011-024)
3363, 3369 & 3377 Via Lido and 3378 Via Oporto

SUMMARY: The property owner is seeking to continue the existing nonconforming commercial uses of the subject property by requesting the following amendments:

- 1) General Plan Land Use designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V),
- 2) Coastal Land Use Plan designation from Multiple-Unit Residential (RM-D) to Mixed-Use Vertical (MU-V), and
- 3) Zoning designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).

No new land use or development is proposed at this time.

CEQA COMPLIANCE: The project is categorically exempt under Section 15302 of the California Environmental Quality Act (CEQA) Guidelines – Class 2 (Replacement or Reconstruction).

ACTION:

- 1) Conduct public hearing; and
- 2) Adopt Resolution No. ____ recommending the City Council:
 - Approve General Plan Amendment No. GP2011-003,
 - Approve Local Coastal Plan Amendment No. LC2011-002, and
 - Approve Code Amendment No. CA2011-005

ITEM NO. 4 Pemstein Residence Minor Use Permit and Variance (PA2010-173)
2430 Holiday Road

SUMMARY: Minor use permit to allow senior accessory dwelling (granny) unit and two related variance requests to allow for the construction of 1) a garage addition to encroach 2 feet into the easterly 10-foot side yard setback and 2) an 8 foot high wall to encroach into the 10-foot easterly side yard setback. The application also includes a request for variance approval to retain nine (9) as-built over-height structures located within required setbacks including: four (4) arbors, three (3) walls, a free-standing fireplace and a storage shed.

CEQA COMPLIANCE: The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures).

ACTION:

- 1) Staff requests a continuance of this item to May 19, 2011.

H. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 Planning Director's report.

ITEM NO. 6 Planning Commission reports.

ITEM NO. 7 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

ITEM NO. 8 Request for excused absences.

ADJOURNMENT

CITY OF NEWPORT BEACH
Planning Commission Minutes

April 21, 2011
Regular Meeting – 6:30 p.m.

ROLL CALL:		
Commissioners Eaton, Unsworth, Hawkins, McDaniel, Toerge, Ameri, and Hillgren - present		
STAFF PRESENT:		
James Campbell, Acting Planning Director Gregg Ramirez, Senior Planner Michael Torres, Assistant City Attorney Melinda Whelan, Assistant Planner Marlene Burns, Administrative Assistant		
POSTING OF THE AGENDA:		
The Planning Commission Agenda was posted on April 8, 2011.		
PUBLIC COMMENTS:		None
* * *		
REQUEST FOR CONTINUANCES:		None
* * *		
CONSENT ITEMS		
SUBJECT: MINUTES of the regular meeting of April 7, 2011		ITEM NO. 1 Approved
Motion made by Commissioner Unsworth and seconded by Commissioner Hawkins to approve the minutes as corrected and amended.		
Motion carried with the following vote:		
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Hillgren	
Noes:	None	
Excused:	Ameri and Toerge	
* * *		
PUBLIC HEARING ITEMS		
SUBJECT: Gina's Pizza Minor Use Permit - (PA2011-006) 3142 Balboa Boulevard		ITEM NO. 2 PA2011-006 Approved
A minor use permit to allow a food service, eating and drinking establishment with no late hours, an outdoor dining area, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license.		
Melinda Whelan, Assistant Planner, gave a brief overview of the staff report with a PowerPoint presentation.		
Commissioner Eaton asked some questions and they were answered by Ms. Whelan as follows:		
<ul style="list-style-type: none">The proposed Alcoholic Beverage permit has been requested to be utilized in the outdoor dining patio.Occupancy limits are based on a ratio of 1:15 square feet of net public area for		

outdoor dining, resulting in a maximum occupancy of 28, therefore the occupancy limit will be greater than the proposed seating of 22.

- According to the acoustical engineer, the noise generated in a “worst case scenario” at the maximum occupancy level in the patio would raise the dBA by one (1) to be 55.1 dBA, which would still lower than the ambient noise level from Balboa Boulevard, which is 59.8 dBA.

Chairperson McDaniel asked if the noise from the interior would add to the noise from Balboa Boulevard, resulting in added noise levels affecting the neighbors. Ms. Whelan explained that there would be no additional noise and that the report included all maximum noise.

Ms. Whelan continued to answer the questions that Commissioner Eaton had related to noise barriers and noted that the acoustical engineer’s recommendation was that a barrier measuring nine (9) feet in height would be sufficient to mitigate the noise impact. The nearby residential second floor decks were included in the analysis.

Commissioner Unsworth proposed that a condition be added that would establish a maximum occupancy for the outdoor dining area so that the limit on occupancy would not be over what the Building Division would require. Deputy City Attorney Michael Torres responded that this has been done in the past, and would be consistent with what the Planning Commission has done as in the case of Malarky’s.

Andrew Costa, Owner and Operator of Gina’s Pizza, gave a PowerPoint presentation to the Planning Commission and stated he is familiar with outdoor dining in close proximity to residential areas and that there should not be any concerns as there is no police record of any issues. With his Corona del Mar store.

Commissioner Hawkins noted several concerns, including:

- Proximity of this proposed restaurant wall being so close to residential homes, unlike the Corona del Mar restaurant, which is separated by a street.
- The table with the fire pit.
- Alcohol sales exceeding food sales.
- Potential of new operator taking over in the future and suggested as an alternative option to apply for an Operator’s Permit for late hour establishments so as to limit future operators.

Architect, Gary Wang, addressed stated that the fire pit measures 6.5 feet in diameter.

Public comment period was opened.

Comments were given by the following residents from the surrounding neighborhood:

George Schroeder
Howard Minnick
Ron White

Comments included:

- Noise levels and second-hand smoke negatively affecting the adjacent residential properties.
- Proposed limiting of hours for the outdoor patio to 9:00 p.m. instead of 10:00 p.m.
- Requesting that impacts caused by the outdoor patio be mitigated by establishing and monitoring them regularly.
- Limited parking may be an issue.

- Trash bin in drive way that was not there before, is now there.

Commissioner Hillgren asked that in addition to indoor smoking being prohibited, if outdoor smoking was also prohibited for establishments. Ms. Whelan confirmed that it is the case; therefore the issue had been resolved.

Sean Whiskeman with Catellus Development did not believe that the noise levels were an issue as they were measured from 18 feet. The property management team is going to meet with neighbors to ensure that there is open communication for complaints and address concerns. In response to the trash bin, it is there to serve Chase Bank, so Gina's will be required to use the trash bin in the back. Not in favor of the trellis and believes that it is an over engineered design.

Acting Planning Director, Jim Campbell, stated that the non-smoking state law is to protect employees from enclosed locations, but that it was unknown if the outdoor patio with enclosure would be considered an enclosed location, by definition.

Public comment period was closed.

The Applicant, Mr. Costa, stated that a condition for non-smoking in the outdoor patio would not be a concern. With regard to the trellis plus the panels, Mr. Costa opined that it would be overkill, but would be willing to do whatever it takes to ensure that noise would not be an issue. Proposed that the existing wall could be rebuilt to abate noise and there would be no need for trellis. Referencing the hours, he would be willing to close the patio at 10:00 p.m. as long as operations are still allowed inside at the normal time. A forty to sixty ratio for alcohol to food sales, would be acceptable.

According to Architect Wang, extending the height of the wall to nine (9) feet might be a better solution avoiding the trellis and added that the acoustical engineer would be a part of the process. Commissioner Eaton suggested wrapping the wall over the service corridor gate up to the building as an alternative; the suggestion was acceptable to Architect Wang.

Motion made by Commissioner Hillgren and seconded by Commissioner Hawkins, to adopt a resolution approving Minor Use Permit No. UP2011-002 with the attached findings and conditions:

- Modify Condition No. 11 to change the hours of operation for the outdoor dining area from closing at 10:00 p.m. to closing at 9:00 p.m. Sunday through Thursday; and 7:00 a.m. to 10:00 p.m. Friday and Saturday.
- Modify Condition No. 33 to include the percentage of gross sales to food sales and read as follows:

The quarterly gross sales of alcoholic beverages shall not exceed 40 percent of the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on command.

- Condition of Approval to be added and include that smoking be prohibited within the outdoor dining area.
- Modify Condition No. 13 to read as follows:

The 9-foot-tall wall/barrier shall be provided adjacent the outdoor dining area consistent with the Acoustical Report to mitigate noise to meet the decibel requirements of Section 10.26 of the Municipal Code. Subject to the

<p><i>approval of the Planning Director, the design of the noise wall/barrier can be modified from that shown on the approved plans but, shall remain in substantial conformance with the Acoustical Report. Also, consistent with the recommendation in the Acoustical Report, the service corridor gate shall be replaced with solid wood filled metal or ¼ inch tempered glass and the noise wall/barrier as designed shall extend above the gate. The wall/barrier is not required to extend the 10-feet beyond the service corridor gate unless required to meet the requirements of Section 10.26. The design of the noise barrier must reduce noise levels to meet the requirements of Section 10.26 and the outdoor dining area is not permitted to operate without this barrier.</i></p>		
<p>Motion carried with the following vote:</p>		
<p>Ayes:</p>	Eaton, Unsworth, Hawkins, McDaniel, and Hillgren	
<p>Noes:</p>	None	
<p>Excused:</p>	Ameri and Toerge	
<p style="text-align: center;">* * *</p>		
<p style="text-align: center;">STAFF AND COMMISSIONER ITEMS</p>		
<p>Planning Director's report:</p> <ul style="list-style-type: none"> • Malarky's Appeal to be heard at the April 26, 2011 City Council Meeting. • Broadmoor Setback Appeal to be heard at the May 10, 2011 City Council Meeting. 		<p>ITEM NO. 3</p>
<p>Planning Commission reports: No report.</p>		<p>ITEM NO. 4</p>
<p>Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.</p>		<p>ITEM NO. 5</p>
<p>Requests for excused absences – Commissioner Hillgren requested to be absent on May 19, 2011 and June 9, 2011. The request was granted.</p>		<p>ITEM NO. 6</p>
<p>ADJOURNMENT: 7:54 p.m. MICHAEL TOERGE, SECRETARY CITY OF NEWPORT BEACH PLANNING COMMISSION</p>		

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

May 5, 2011 Meeting
Agenda Item 2

SUBJECT: Establishment of In-Lieu Fair Share Fee Credit toward North Newport Center for Construction of a Third Eastbound Left Turn Lane on San Joaquin Hills Road at MacArthur Boulevard

APPLICANT: Irvine Company

PLANNER: James Campbell, Acting Planning Director
949-644-3228, jcampbell@newportbeachca.gov

PROJECT SUMMARY

An additional eastbound left turn lane from San Joaquin Hills Road to MacArthur Boulevard is proposed to be built by the Irvine Company. Consistent with provisions of both the Fair Share Ordinance (NPB Municipal Code, Chapter 15.38 – Attachment PC-1) and the North Newport Center Development Agreement, Planning Commission approval of the in-lieu credit towards the Fair Share Fees is requested.

RECOMMENDATION

Adopt Resolution No. ____ approving staff's recommendation of the amount of in-lieu contributions deemed applicable towards Fair Share Fees due to construction of the third eastbound left turn lane on San Joaquin Hills Road at MacArthur Boulevard (Attachment PC-2).

INTRODUCTION

Project Setting

The proposed improvements at the intersection of San Joaquin Hills Road and MacArthur Boulevard are located near the northwesterly corner of the North Newport Center Planned Community (PC-56). PC-56 currently consists of Fashion Island, a portion of Block 100, a portion of Block 400, a portion of Block 500, Block 600, a portion of San Joaquin Plaza as well as a portion of Block 800. Fashion Island is developed with a regional shopping center consisting of anchor department stores, retail stores, restaurants and a cinema. Other blocks within Newport Center are developed with office buildings, hotels, surface parking, parking structures and landscaped open space. The subject intersection, being located adjacent to Newport Center, does handle a significant portion of traffic traveling to and from Newport Center as well as serving both city-based and regional traffic.

VICINITY MAP**Project Description**

The applicant plans on implementing the required third eastbound left turn lane from San Joaquin Hills Road to MacArthur and proposes to have the estimated costs associated with its implementation considered as an in-lieu contribution under the City's Fair Share Traffic Contribution Ordinance. The proposed improvements are consistent with improvements anticipated in the Circulation Element of the General Plan adopted in 2007 as well as with improvements assumed within the City's Fair Share Fee Ordinance.

Background

The need to construct a third left eastbound turn lane on San Joaquin Hills Road at its intersection with MacArthur was identified during City approval of the North Newport Center Planned Community (PC-56) and associated Zoning Implementation and Public Benefit Agreement (DA 2007-002) adopted on December 18, 2007. The ability for the Irvine Company to satisfy portions of its obligation to pay Fair Share Traffic Fees through in-lieu contributions, specifically including the subject improvements is stated in Section 4.3 of the subject Development Agreement. Furthermore, the subject Development Agreement document indicates that, in accordance with provisions of the City's Fair Share Traffic Contribution Ordinance, that establishment of in-lieu contributions requires the approval of the City Planning Commission.

DISCUSSION

Analysis

The applicant prepared and submitted a conceptual design and engineer's estimate for construction of the subject third left turn lane. It was intended to reflect a level of improvements consistent with those assumed in the Circulation Element of the adopted General Plan and in the conceptual improvements and cost estimates prepared in support of the on-going update of the City's Fair Share Fee Ordinance. Public Works staff has reviewed the conceptual plan and accompanying Preliminary Cost Estimate submitted by the applicant (See attached letter dated April 13, 2011 and accompanying attachments) and found them to be consistent with the level of improvements planned for this western leg of this intersection in both the Circulation Element of the General Plan as well as in conceptual plans and cost estimates prepared in support of the City's process to update the Fair Share Fees. Therefore, it is recommended that the amount of \$368,000 be established as the amount of in-lieu contributions to be credited as the Fair Share Fee exposure is calculated for the 650 Newport Center Drive Project. While this estimated amount is likely to change upon final construction of the improvements, the correct amount will be determined upon completion of the improvements and the final in-lieu credit amount will be modified accordingly.

Summary

The proposed improvements are consistent with those identified for this intersection location in both the Circulation Element of the General Plan and the City's Fair Share Fee Ordinance improvement program. Furthermore, the means of estimating the in-lieu credit are consistent with requirements of both the City's Fair Share Fee Contribution Ordinance, as well as the North Newport Center Development Agreement.

Environmental Review

The construction of the left turn lane on San Joaquin Hills Drive was contemplated in the City's General Plan Circulation Element and analyzed in the City's 2006 General Plan Update Environmental Impact Report. The approval of the associated in-lieu fees and credits is an action that is consistent with the City's Fair Share Ordinance and the North Newport Center Zoning Implementation and Public Benefit Agreement. This action is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.b.3 of the CEQA Guidelines). It can be seen with certainty that there is no possibility that his activity will have a significant effect on the environment. Therefore, this activity is not subject to CEQA.

Public Notice

Notice to the public has been provided with the posting of the agenda for this meeting in accordance with the Brown Act.

Prepared and submitted by

**James
Campbell**

Digitally signed by James Campbell
DN: cn=James Campbell, o=City of Newport
Beach, ou=Planning Department,
email=xcampbell@newportbeachca.gov,
c=US
Date: 2011.04.28 15:28:42 -07'00'

James W. Campbell, Acting Planning Director

ATTACHMENTS

- PC 1 Section 15.38.080 (In Lieu Contributions)
- PC 2 Draft Resolution
- PC 3 Letter from Irvine Company dated April 13, 2011

Attachment PC-1

Section 15.38.080 (In Lieu Contributions)

15.38.080 In Lieu Contributions.

The provisions of this chapter may be satisfied, in whole or in part, by the dedication of right-of-way, or the construction of roadway or related improvements necessary to the implementation of the master plan of streets and highways, as set forth herein:

A. In lieu credit may be given for master plan of streets and highways improvements which are not assumed to be required of adjacent developments pursuant to the Subdivision Map Act, and are included in the fair share implementation resolution.

B. In lieu credit may be given where application of the traffic phasing ordinance to a specific development results in improvements that are shown on the master plan of streets and highways, except:

1. Improvements required pursuant to the traffic phasing ordinance that may be or are temporary in nature, or those improvements that may have to be relocated, altered or removed in the future, shall not be eligible for consideration as an in lieu contribution.

2. Improvements required pursuant to the traffic phasing ordinance that exceed the requirements of the master plan of streets and highways, that are necessary to accommodate a specific development, shall not be eligible for consideration as an in lieu contribution.

C. Acceptance of all proposed in lieu contributions shall be subject to the approval of the Planning Commission or the City Council on appeal or review. (Ord. 94-19 (part), 1994: Ord. 84-16 (part), 1984)

Attachment PC-2

Draft Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF NEWPORT BEACH APPROVING AN IN-LIEU FEE
CREDIT FOR THE 650 NEWPORT CENTER DRIVE PROJECT
IN THE NORTH NEWPORT CENTER PLANNED COMMUNITY
(PC-56)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. A request for review of development plans for construction of a building in Block 600 of the North Newport Center Planned Community (NNCPC) was submitted by Irvine Company as applicant. The development is consistent with the City's General Plan and the NNCPC but is subject to review by the City of Newport Beach. No discretionary approvals are required.
2. In conjunction with construction of the building, located at 650 Newport Center Drive, Irvine Company intends to construct a third eastbound left turn lane on San Joaquin Hills Road.
3. The proposed roadway improvements will implement the requirement of Section 7.3 of the North Newport Center Development Agreement and are consistent with improvements anticipated in the Circulation Element of the General Plan and included in the City's Fair Share Fee Program.
4. The applicant prepared and submitted a conceptual design and engineer's estimate for construction of the subject left turn lane that reflected a level of improvements consistent with those assumed in the Circulation Element. Staff has reviewed the conceptual plan and accompanying preliminary cost estimate and found them consistent with the Circulation Element and the City's Fair Share Fees.
5. Consistent with Section 15.38.080 of the City's Fair Share Traffic Contribution Ordinance for In-lieu Fees and the provisions of the Fair Share Traffic Fees Section (4.3) of the North Newport Center Development Agreement, Irvine Company has requested that in-lieu fee credits for the intersection improvements in the amount of \$368,000 be approved. It is understood that the amount of the in-lieu fee credit will be subject to adjustment based on the actual costs incurred to implement the project.
6. On May 5, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, the Planning Commission considered the request. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION

This action is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.b.3 of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment. Therefore, this activity is not subject to CEQA.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission hereby approves the In-lieu Fee Credit established for the proposed improvements to San Joaquin Hills Road consistent with the Circulation Element of the General Plan and the Fair Share Traffic Contribution Ordinance.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF MAY, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____

Earl McDaniel, Chairman

BY: _____

Michael Toerge, Secretary

Attachment PC-3

Letter from Irvine Company
dated April 13, 2011



IRVINE COMPANY

Since 1864

April 13, 2011

Mr. Steve Badum
Public Works Director
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Dear Steve:

This letter is submitted to request initiation of the process to establish an in lieu credit towards the Fair Share Fees for the 650 Newport Center Drive Project for improvements to the intersection of MacArthur and San Joaquin Hills Road.

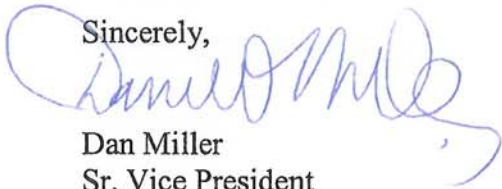
The Irvine Company intends to construct a third eastbound left turn lane on San Joaquin Hills Road in conjunction with the proposed 650 Newport Center Drive Project. The proposed improvements (shown on the attached Exhibit) will implement the requirement from Section 7.3 of the North Newport Center Development Agreement and are consistent with improvements to this intersection that are included in the City's Fair Share Fee Program. Therefore, consistent with the In-Lieu Contributions Section (15.38.080) of the Fair Share Traffic Contribution Ordinance and the provisions of the Fair Share Traffic Fees Section (4.3) of the North Newport Center Development Agreement, it is requested that the in-lieu credit for these improvements be established.

The attached conceptual plan for implementation of the additional left turn lane incorporates input received from City staff during prior reviews and serves as the basis of the attached Engineer's estimate of costs for the subject improvement. As you are aware, the attached estimate has been prepared to be consistent with both the methodology and unit price assumptions utilized in the estimate for improvements to the subject intersection that is incorporated in the current cost estimates being used to update the Fair Share Fee Program. Therefore, this estimate is submitted to serve as the basis for establishing the in-lieu credit applicable to the 650 Newport Center Drive Project at this time, while recognizing that the final amount of this in-lieu credit will be subject to adjustment based on the actual costs incurred to implement this project.

Please call with any questions that may arise regarding this request or the attached materials or if additional information is necessary to complete the process of establishing this in-lieu credit.

We appreciate the opportunity to have worked with you and your staff during preparation of the conceptual plan and associated cost estimate and look forward to working together to implement this important master planned traffic improvement.

Sincerely,



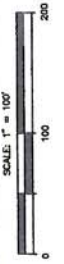
Dan Miller
Sr. Vice President

Cc: Tony Brine – City of Newport Beach
John Boslet – Irvine Company
Ron Keith – Irvine Company
Tim Carey – Irvine Company



CONCEPTUAL PLAN FOR
SAN JOAQUIN HILLS ROAD TRIPLE LEFT

September 4, 2008



INTERSECTION IMPROVEMENTS
EXISTING CHURCH SITE IMPROVEMENTS

**NEWPORT BEACH FAIRSHARE FEE PROGRAM UPDATE
PRELIMINARY COST ESTIMATES**

Location: MacArthur/San Joaquin Hills Rd
Mitigation: Add Third SB Left Turn Lane

Date: 2/7/2011
Estimated by: P. McNab

	DESCRIPTION OF WORK	UNIT PRICE	QUANTITY	COST
1	Mobilization	10.00%		\$24,000
2	Clear & Grub	\$10,000.00 / AC		\$0
3	Remove Striping	\$10.00 / LF	1,350	\$14,000
4	Remove Curb & Gutter	\$30.00 / LF		\$0
5	Remove Median Curb	\$30.00 / LF	1,250	\$38,000
6	Remove PCC Sidewalk	\$7.00 / SF		\$0
7	Remove Pavement	\$4.00 / SF	1,260	\$5,000
8	Remove Wall	\$10.00 / LF		\$0
9	Remove Channel	\$15.00 / LF		\$0
10	Remove/Replace Chain Link Fence	\$50.00 / LF		\$0
11	Reconstruct Metal Beam Guard Rail	\$70.00 / LF		\$0
12	Remove & Relocate Tree	\$3,000.00 / EA		\$0
13	Sawcut	\$1.00 / LF	900	\$1,000
14	Relocate Street Light	\$7,500.00 / EA	2	\$15,000
15	Modify Traffic Signal System	\$25,000.00 / EA	1	\$25,000
16	Relocate Freeway Sign (2 post)	\$1,000.00 / EA		\$0
17	Relocate Sign (1 Post)	\$300.00 / EA		\$0
18	Reconstruct Overhead Sign	\$50,000.00 / EA		\$0
19	Relocate Call Box	\$2,000.00 / EA		\$0
20	Relocate Power Pole (Wood)	\$25,000.00 / EA		\$0
21	Relocate Catch Basin	\$8,000.00 / EA		\$0
22	Relocate Fire Hydrant	\$2,500.00 / EA		\$0
23	Relocate Bus Bench	\$600.00 / EA		\$0
24	Relocate Monument Wall	\$5,000.00 / EA		\$0
25	Relocate Utility Boxes	\$500.00 / EA		\$0
26	Relocate Main Water Valve	\$5,000.00 / EA		\$0
27	Relocate Utility Vault	\$3,000.00 / EA		\$0
28	Adjust Manhole to Grade	\$1,500.00 / EA		\$0
29	Adjust Water Meter	\$500.00 / EA		\$0
30	Adjust Water Valve	\$500.00 / EA		\$0
31	Adjust Minor Above Ground Utilities	\$500.00 / EA		\$0
32	Modify Driveway	\$5,000.00 / EA		\$0
33	Earthwork	\$12.00 / CY		\$0
34	Construct PCC Pavement	\$15.00 / SF		\$0
35	Construct AC Pavement	\$14.00 / SF	2,430	\$34,000
36	Construct AC Overlay	\$3.00 / SF		\$0
37	Construct Slurry Seal	\$0.25 / SF		\$0
38	Construct Striping & Marking	\$4.00 / LF	1,350	\$5,000
39	Construct AC Dike	\$7.00 / LF		\$0
40	Construct Curb & Gutter	\$30.00 / LF		\$0
41	Construct Concrete Barrier	\$50.00 / LF		\$0
42	Construct Median Curb	\$20.00 / LF	1,250	\$25,000
43	Construct Median Concrete	\$10.00 / SF	2,300	\$23,000
44	Construct Median/Parkway Landscaping	\$10.00 / SF		\$0
45	Construct PCC Sidewalk	\$7.00 / SF		\$0
46	Construct Access Ramp	\$5,000.00 / EA		\$0
47	Construct Retaining Wall	\$50.00 / SF		\$0
48	Construct Storm Drain Main	\$100.00 / LF		\$0
49	Construct RCB	\$1,000.00 / LF		\$0
50	Construct Headwall	\$5,000.00 / EA		\$0
51	Construct Concrete V-Ditch	\$15.00 / LF		\$0
52	Construct Bridge Widening	\$500.00 / SF		\$0
53	Construct Wall	\$70.00 / LF		\$0
54	Building/Structure Demolition (1 Story)	\$10.00 / SF		\$0
55	Traffic Control	8%		\$15,000
56	Drainage Items	10%		\$0
57	SWPPP Plan and Implementation	6%		\$12,000
CONSTRUCTION SUBTOTAL				\$236,000
	Right-of-Way	100 / SF		\$0
	Right-of-Way Management	5 / %		\$0
RIGHT-OF-WAY SUBTOTAL				\$0
TOTAL CONSTRUCTION & RIGHT-OF-WAY COST				\$236,000
Preliminary Project Development (10% of total Construction/RW cost)				\$24,000
Design Engineering/Administration Costs (15% of total Construction/RW cost)				\$36,000
Construction Engineering Costs/Administration (10% of total Construction/RW cost)				\$24,000
Contingency (20% of Total Construction/RW cost)				\$48,000
TOTAL PROJECT COSTS				\$368,000

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

May 5, 2011 Hearing

Agenda Item 3

SUBJECT: Via Lido Amendments - (PA2011-024)
3363, 3369 & 3377 Via Lido and 3378 Via Oporto

- General Plan Amendment No. GP2011-003
- Local Coastal Plan Amendment No. LC2011-002
- Code Amendment No. CA2011-005

APPLICANT: Allan Fainbarg

PLANNER: Rosalinh Ung, Associate Planner
(949) 644-3208, rung@newportbeachca.gov

PROJECT SUMMARY

The property owner is seeking to continue the existing nonconforming commercial uses of the subject property by requesting the following amendments:

- 1) General Plan Land Use designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V),
- 2) Coastal Land Use Plan designation from Multiple-Unit Residential (RM-D) to Mixed-Use Vertical (MU-V), and
- 3) Zoning designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).

No new land use or development is proposed at this time.

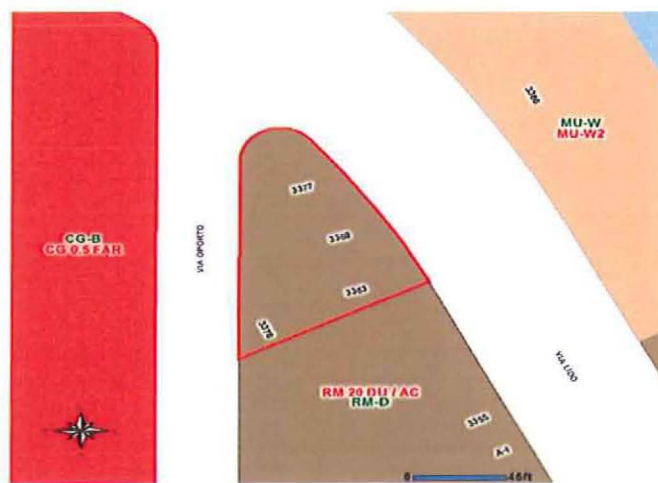
RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ (Attachment No. PC 1) and attached Exhibits recommending the City Council:
 - Approve General Plan Amendment No. GP2011-003,
 - Approve Local Coastal Plan Amendment No. LC2011-002, and
 - Approve Code Amendment No. CA2011-005

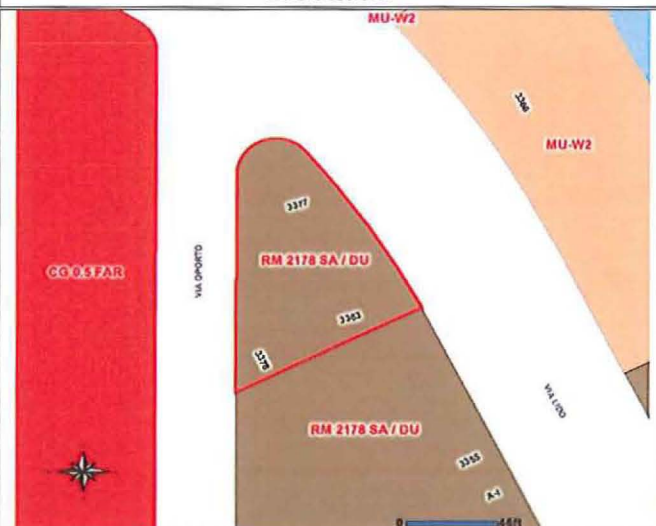
VICINITY MAP



GENERAL PLAN & COASTAL LAND USE



ZONING



LOCATION	EXISTING GENERAL PLAN & COASTAL LAND USE	EXISTING ZONING	CURRENT USE
ON-SITE	RM/20 DU/AC & RM-D	RM 2178 SA/DU	Retail Commercial & Office Uses
NORTH	MU-W	MU-W2	Retail Commercial & Office Uses
SOUTH	RM/20 DU/AC & RM-D	RM 2178 SA/DU	Retail Commercial & Office Uses
EAST	MU-W	MU-W2	Office & Residential Uses
WEST	CG 0.5 FAR & CG-B	CG 0.5 FAR	Retail Commercial Uses

INTRODUCTION

Project Setting

The subject property is an approximately 8,106 square feet in size and located on the inland side of Via Lido in Lido Marina Village area. It has land use designation of RM (Multiple-Unit Residential) by the General Plan Land Use Element, Coastal Land Use Plan and the Zoning Code. The property is currently improved with two, single-story commercial buildings that are being occupied by a beauty salon, a day spa, and two office developments.

Background

The subject property was originally developed with commercial and office developments in 1970. The Zoning designation was C-1 (Light Commercial), according to the City's building records.

On March 10, 1983, the Planning Commission approved Use Permit No. 3024 to allow the establishment of a take-out ice cream shop to be located in the smaller building facing Via Oporto (3378 Via Oporto). The subject property, at that time, has a zoning designation of C-O (Limited Commercial).

On November 9, 1992, the City Council adopted Ordinance 92-45 to reclassify specific parcels City-wide including the subject property, from C-O (Limited Commercial) to RSC (Retail & Service Commercial), in order to be consistent with the 1988 Comprehensive General Plan Revision.

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"). As a part of this update, the General Plan designation of the subject property was changed from RSC to RM (Multiple Residential) 20 DU/AC.

On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001, making the Coastal Land Use Plan consistent with the General Plan Update. As a part of this Coastal Land Use Amendment, the Coastal Land Use designation of the subject property was changed from CG-B (General Commercial) 0.75 FAR to RM-D (Multiple Residential) 20-29.9 DU/AC.

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. The nonconformity determination; however, could not be made until the finalization of the City's Local Coastal Plan (LCP) which occurred on July 14, 2009.

On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The Zoning designation of the subject property was changed from RSC (Retail & Service Commercial) to RM (Multiple Residential) 2178 square feet per dwelling unit (20 units per acre). The result of this action rendered the existing commercial uses located on subject property nonconforming, making them subject to abatement.

The City sent letters to all known uses that are subject to abatement. Subsequently, staff has met and continues to meet with many of the owners of property that are subject to abatement to discuss the land use options that are available to address their individual situations. These options include the conversion of existing uses to residential uses (apartment, townhouse, etc); request for extension of the abatement period; and/or request to amend the General Plan, Coastal Land Use Plan and Zoning Code to allow the continuation of the existing commercial uses. In the case of the subject application, the property owner chooses to pursue amendments to change the land use designations of their property from residential to mixed-use.

Project Description

The subject application does not include a specific project for development at this time. The proposed land use changes, as shown below, would allow the retention of the existing land use and allow for future development in accordance with the standards of the proposed zoning district.

	Existing	Proposed
General Plan	Multiple-Unit Residential (RM) 20 DU/AC	Mixed-Use Vertical (MU-V)
Coastal Land Use Plan	Multiple-Unit Residential (RM-D) 20.0-29.9 DU/AC	Mixed-Use Vertical (MU-V)
Zoning District	Multiple-Unit Residential (RM) 2178 S.F./DU	Mixed-Use Vertical (MU-V)

DISCUSSION

Analysis

Amendments to the General Plan Land Use Plan, Coastal Land Use Plan and Zoning Code are legislative acts. Neither City nor State Planning Law sets forth required findings for approval or denial of such amendments. However, when making a recommendation to the City Council, the Planning Commission should consider applicable policies and development standards to ensure internal consistency.

General Plan

The applicant requests to amend the General Plan to change the subject property from a multiple-unit residential to a mixed-use land use designation. The MU-V designation is intended to provide for the development of properties for mixed-use structures that vertically integrate housing with retail uses including retail, office, restaurant, and similar nonresidential uses. MU-V designated sites also may be developed exclusively for retail or offices in accordance with the CN, CC, CG, or CO-G designations.

Mixed-Use Buildings: floor area to land ratio of 1.50; where a minimum floor area to land ratio of 0.35 and maximum of 0.5 shall be used for nonresidential purposes and maximum of 1.00 for residential.

Nonresidential Buildings: floor area to land area ratio of 0.75.

In considering the proposed General Plan Amendment, the Planning Commission should consider the following Land Use Element policies:

Policy LU 3.2 - Growth and Change states as follows:

Enhance existing neighborhoods, districts, and corridors, allowing for re-use and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.

Policy LU 3.2 is intended to provide direction to decision-makers in determining under what circumstances changes in land use, density, or intensity should be considered. This policy recognizes that there are some areas of the City that are not achieving their full potential and the policy establishes strategies for their enhancement and revitalization. The proposed amendment would not create unacceptable or significant traffic impacts or impacts to existing infrastructure or public services given the relatively small size of the lot and MU-V Development Standards. The continuation of existing uses is consistent with the uses allowed under the proposed mixed-use designation. The development of vertically integrated mixed-use buildings will be compatible with the future development planned for Lido Marina Village and nearby properties.

LU Policy 3.3 - Opportunities for Change states in part as follows:

Land Use Policy LU 3.3 is intended to advance Goal LU 3, to provide: "Opportunities for Change - Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors...Balboa Peninsula: more efficient patterns of use that consolidate the Peninsula's visitor-serving and mixed uses within the core commercial districts; encourage marine-related uses especially along the bay front; integrate residential with retail and visitor-serving uses in Lido Marina Village, McFadden Square, Balboa Village, and along portions of the Harbor frontage; re-use interior parcels in Cannery Village for residential and limited mixed-use and live/work buildings; and redevelop underperforming properties outside of the core commercial districts along the Balboa Boulevard corridor for residential. Infill development shall be designed and sited to preserve the historical and architectural fabric of these districts."

The subject site is located at the Lido Marina Village's southern edge where specialty retail uses, restaurants, office uses, the City Hall and churches are in existence. This area has experienced a high number of building vacancies and many retail/office developments that are underperforming. The subject site is improved with two, single-story commercial buildings and currently occupied by a beauty salon, a day spa, real estate office and a consulting office. Staff believes the proposed project can be found consistent with this policy as the proposed amendments would allow the existing office/commercial uses to remain and provide future opportunity for residential development to be developed above retail and office uses.

LU Policy 6.9.1 – Priority Uses

Encourage uses that take advantages of Lido Village's location at the Harbor's turning basin and its vitality and pedestrian character, including visitor-serving and retail commercial, small lodging facilities (bed and breakfasts, inns), and mixed-use buildings that integrate residential with retail uses [areas designated as "MU-W2", Subarea "A"]. A portion of the Harbor frontage and interior parcels (Subarea "B") may also contain multi-family residential [designated as "RM (20DU/AC)"], and the parcel adjoining the Lido Isle Bridge a recreational and marine commercial use [designated as "CM (0.3)"]

Staff believes the proposed project can be found consistent with this policy as the proposed amendments would allow the existing office/commercial uses to remain and provide future opportunity for residential development to be developed above retail and office uses at the subject site would be complementary to the nearby MU-W2 designated properties.

Coastal Land Use Plan

The subject property is located in the coastal zone and therefore, is subject to the applicable goals, objective and policies of the Coastal Land Use Plan. This Plan is created to govern the use of land and water in the coastal zone within the City of Newport Beach and is in accordance with the California Coastal Act of 1976. The subject property has a land use designation of Multiple-Unit Residential (RM-D) 20.0-29.9 DU/AC. The applicant is requesting to change the current land use to a mixed-use designation. The subject property does not contain any sensitive coastal resources as it is presently improved with commercial buildings nor located where public access easements would be required. The Coastal Act prioritizes land uses, and visitor-serving uses are a higher priority land use than residential use. The continuation of commercial uses and future redevelopment on the subject property as permitted in the MU-V designation will not conflict with the policies of the Coastal Act.

Zoning Code

The MU-V Zoning District is intended to provide for areas appropriate for the development of mixed-use structures that vertically integrate residential dwelling units above the ground floor with retail uses including office, restaurant, retail, and similar nonresidential uses located on the ground floor or above.

The stated purpose and intent of the Zoning Code is to carry out the policies of the City of Newport Beach General Plan. Consistency between the General Plan and zoning designation is critical to ensure orderly development and enforcement. With regard to the subject property, existing commercial and office developments would not strictly conform to all standards of the proposed MU-V Zoning District; however, continued commercial use would be allowed without abatement. The subject property would be subject to Chapter 20.38 (Nonconforming Uses and Structures) and new development would require conformance with applicable development and parking standards.

Under the existing RM (20 DU/AC) designation, the subject property could be developed with a maximum of three (3) residential dwelling units. A total of seven (7) parking spaces would be required.

The main purpose of the requested amendment is to maintain the existing commercial uses at the subject property. The applicant also desires, in the future, to have the opportunity to develop residential use above the commercial development.

The charts below demonstrate how the subject property of 8,106 square feet in size could be developed under the minimum and maximum intensity allowance for MU-V zoning designation. For simplicity, it is assumed that parking for the commercial development is a retail use, with the parking requirement of one space for every 250 square feet of gross floor area.

Proposed MU-V designation:

Mixed Use (1.5 FAR)				Parking	
		Min	Max	Min	Max
	Non-Res	2,837 sf (.35 FAR)	4,053 sf (.50 FAR)	12 (1/250)	17 (1/250)
	Res	3 (20/DU/AC)	4 (1.00 FAR)	7(6+1 guest)	10 (8+2 guest)
Total		2,837 sf. + 3 DU	4,053 sf. + 4 DU	19	27

Commercial Only (.75 FAR)		Parking
Total		6,080 sf. (.75 FAR)
		25 (1/250)

As demonstrated, under the minimum mixed-use intensity allowance the subject property could be developed with 2,837 square feet of retail commercial development and three (3) residential dwelling units. Under this scenario, some if not all of the 19 required parking spaces would be off-site, unless a parking waiver could be granted due to the small size of the lot. The maximum mixed-use intensity; however, may not be feasible due to site constraints (i.e., size and location of the property and development standards, including parking, height limits, etc.).

Charter Section 423 (Measure S) Analysis

Pursuant to City Charter Section 423 and Council Policy A-18, an analysis must be prepared to establish whether a proposed general plan amendment (if approved) requires a vote by the electorate. The proposed amendments are combined with 80% of the increases in traffic, dwelling units and non-residential floor area created by previous general plan amendments (approved within the preceding 10 years) within the same statistical area. The following thresholds are applicable: 100 dwelling units, 100 a.m. peak hour trips, 100 p.m. peak hour trips, or 40,000 square feet of non-residential floor area. If any of the thresholds are exceeded with Council approval of the amendment, the amendment would be classified as a "major amendment" and be subject to voter consideration. Approved amendments, other than those approved by the electorate, are tracked for 10 years and factored into the analysis of future amendments as indicated.

Table 1, below, summarizes the changes created by the proposed amendment with the MU-V designation for the subject property, at the maximum allowable intensity. As indicated, in either case, none of the four thresholds would be exceeded, and therefore, a vote is not required. A more detailed analysis is attached (Attachment No. PC 2).

Table 1 Charter Section 423 Analysis Summary Statistical Area B1				
	Allowed Floor Area	A.M. Peak Hour Trips	P.M. Peak Hour Trips	Increase in Allowed Dwelling Units
Prior Amendment GP2010-005	12,083 (at 80%)	36.30 (at 80%)	48.40 (at 80%)	0
Proposed GP2011-003	4,053	12.67	16.83	1
TOTAL	16,136	48.97	65.23	1

SB18 Tribal Consultation Guidelines

Pursuant to Section 65352.3 of the California Government Code, a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission (NAHC) each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that nine tribe contacts should be provided notice regarding the proposed project. The appropriate tribe contacts supplied by the NAHC were provided notice on February 28, 2011. Section 65352.3 of the California Government Code requires 90 days to allow tribe contacts to respond to the request to consult unless the tribe contacts mutually agree to a shorter time period. Staff has not received any responses although the review period remains open. The Planning Commission may recommend the proposed general plan amendment to City Council at this time. However, the City Council may not act on the proposed amendment until the tribe review period is concluded. Given the site is presently developed and that the no development is proposed at this time, staff does not anticipate any conflicts or need for monitoring by the tribes. If any comments are received from the tribes, they will be forwarded to the City Council for consideration.

Environmental Review

The proposed amendments are exempt since they do not entail any significant alteration to the subject property and will bring the General Plan Land Use, Coastal Land Use, and Zoning District designations consistent with the present use of the subject property. The site is presently developed and no development is proposed at this time, however, future development of the existing property and structures would be categorically exempt under Section 15302 of the California Environmental Quality Act (CEQA) Guidelines – Class 2 (Replacement or Reconstruction).

Summary

The applicant has requested the amendments to allow retention of the existing commercial buildings and uses. These uses have been in existence for a very long time and their abatement at this time seems contrary to the General Plan Policies that promote revitalization of the area. Continuation of these uses and future development consistent with the MU-V designation doesn't appear to be in conflict with the General Plan or Coastal Land Use Plan or Coastal Act. Staff does not foresee any adverse environmental impacts with continued use or redevelopment of the property. The approval of the General Plan Amendment to MU-V designation would not necessitate a vote of the electorate, as required by Section 423 of the City Charter.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the properties, and was posted at the site a minimum of ten days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Rosalinh Ung, Associate Planner

Submitted by:


Gregg Ramirez, Senior Planner

ATTACHMENTS

PC 1 Draft Resolution with exhibits
PC 2 Section 423 Analysis Table

Attachment No. PC 1
Draft Resolution

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING APPROVAL TO THE CITY COUNCIL AMENDMENTS TO THE LAND USE ELEMENT OF THE GENERAL PLAN, COASTAL LAND USE PLAN AND THE ZONING CODE TO CHANGE THE LAND USE DESIGNATION FROM MULTIPLE-UNIT RESIDENTIAL (RM) TO MIXED-USE VERTICAL (MU-V) FOR PROPERTY LOCATED AT 3363, 3369 & 3377 VIA LIDO and 3378 VIA OPORTO (PA2011-024)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").
2. On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001 making the Coastal Land Use Plan consistent with the General Plan Update.
3. On January 28, 2008, the City Council adopted a new ordinance (Ordinance No. 2008-05) that established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009.
4. On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The result of that action rendered numerous properties nonconforming, with existing commercial buildings and uses located within residential districts. In accordance with Ordinance No. 2008-05, mentioned above, those properties are subject to abatement.
5. An application was filed by Allan Fainburg with respect to property located at 3363, 3369 & 3377 Via Lido and 3378 Via Oporto, requesting approval for an amendment to the General Plan, Coastal Land Use Plan and the Zoning Code to change the land use designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).
6. The subject property is currently located within the Multiple-Unit Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential Land Use (RM).

7. The change of the General Plan designations of the subject property is from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).
8. The recommended change of the Zoning District designations of the subject property from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).
9. The subject property is located within the coastal zone. The Coastal Land Use Plan category of the subject property is Multiple-Unit Residential Land Use designation (RM-D).
10. The recommended change to the Coastal Land Use designation is consistent with the recommended General Plan Amendment for the subject property from Multiple-Unit Residential (RM-D) to Mixed-Use Vertical (MU-V).
11. Council Policy A-18 requires that proposed General Plan amendment be reviewed to determine if a vote of the electorate would be required. If a project (separately or cumulatively with other projects over a 10-year span) exceeds any one of the following three thresholds, a vote of the electorate would be required if the City Council approves the suggested General Plan Amendment: the project generates more than 100 peak hour trips, adds 40,000 square feet of non-residential floor area, or adds more than 100 dwelling units in a statistical area.
12. This is the second set of General Plan Amendments that affect Statistical Area B5 since the General Plan update in 2006. The proposed amendment including the previous amendment result in an increase of 48.97 a.m. peak hour trips and an increase 65.23 p.m. peak hour trips based on the commercial and residential housing trip rates reflected in Council Policy A-18; an increase of 16,136 square feet in non-residential floor area; and an increase of one dwelling unit. As none of the four thresholds that require a vote pursuant to Charter Section 423 are exceeded, no vote of the electorate is required.
13. A public hearing was held on May 5, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 2 (Replacement or Reconstruction).
2. The proposed amendments are exempt since they do not entail any significant alteration to the subject properties and are essentially bringing the General Plan Land

Use Designation, Coastal Land Use Designation and Zoning District to be consistent with the existing use of the buildings located on the subject property involved. Therefore, this activity is not subject to CEQA.

3. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As the project applicant is the primary beneficiary of such approvals, it is appropriate that the applicant should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

1. Amendments to the General Plan and Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience and the general welfare.
3. The amendments of the Land Use Element of the General Plan and the Coastal Land Use Plan will provide consistency with the proposed code amendment to change the zoning of the subject property from Multiple-Unit Residential (RM) to Mixed-Use (MU-V) designation.
4. The existing buildings and uses, and future development of the subject property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan and the Coastal Land Use Plan; and will be consistent with the purpose and intent of the MU-V zoning district of the Newport Beach Municipal Code.
5. The subject property is occupied by two, single-story commercial buildings and currently occupied by a beauty salon, a day spa, real estate office and a consulting office. The existing uses are permitted in the MU-V zoning district.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission of the City of Newport Beach hereby recommends City Council approval of General Plan Amendment No. GP2011-003, Coastal Land Use Plan Amendment LC2011-002, and Zoning Code Amendment from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V), Statistical Area B5, Attachment Exhibit A.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF MAY, 2011.

AYES:

NOES:

ABSTAIN:

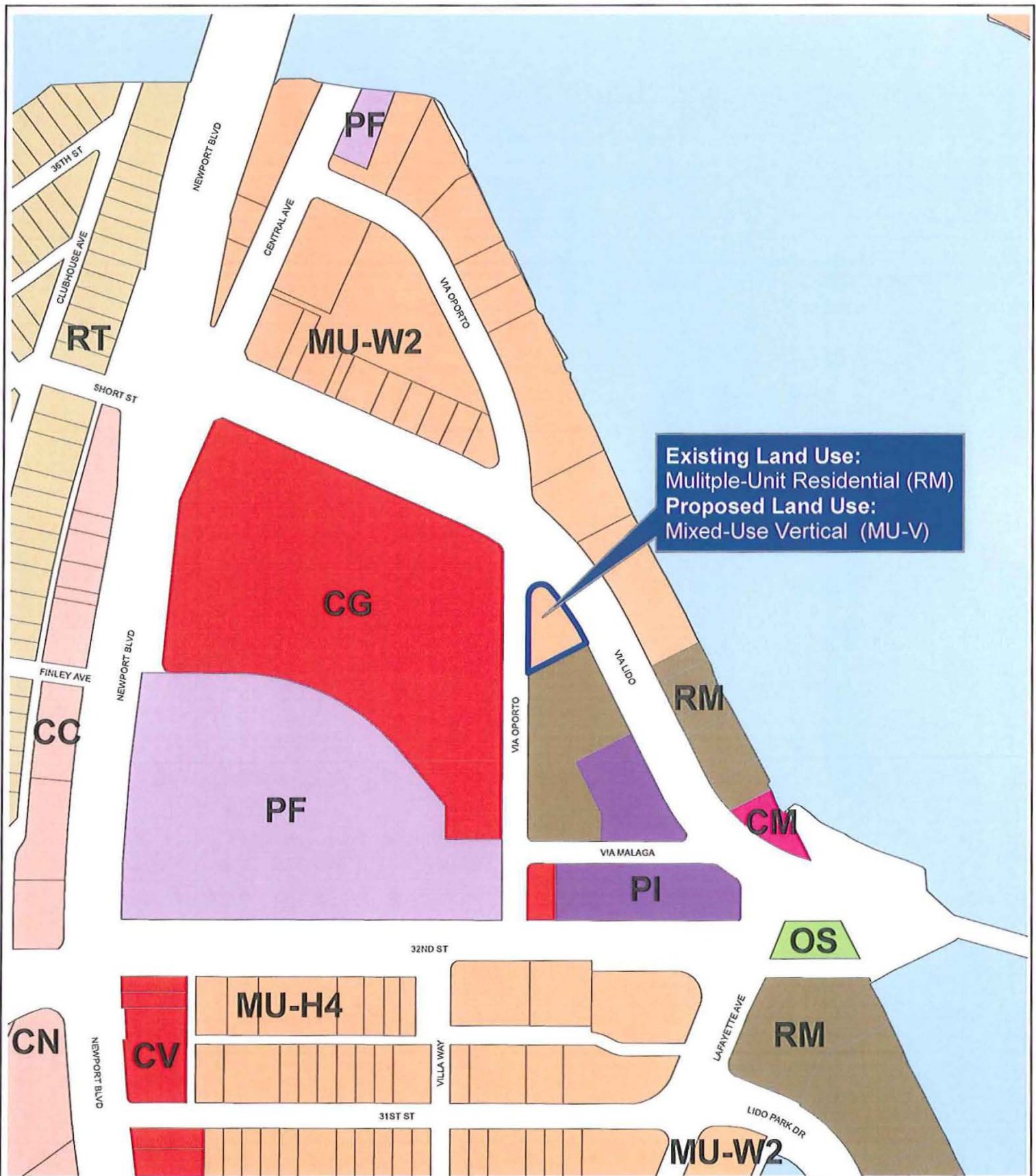
ABSENT:

BY: _____
Earl McDaniel, Chairman

BY: _____
Michael Toerge, Secretary

Exhibit A

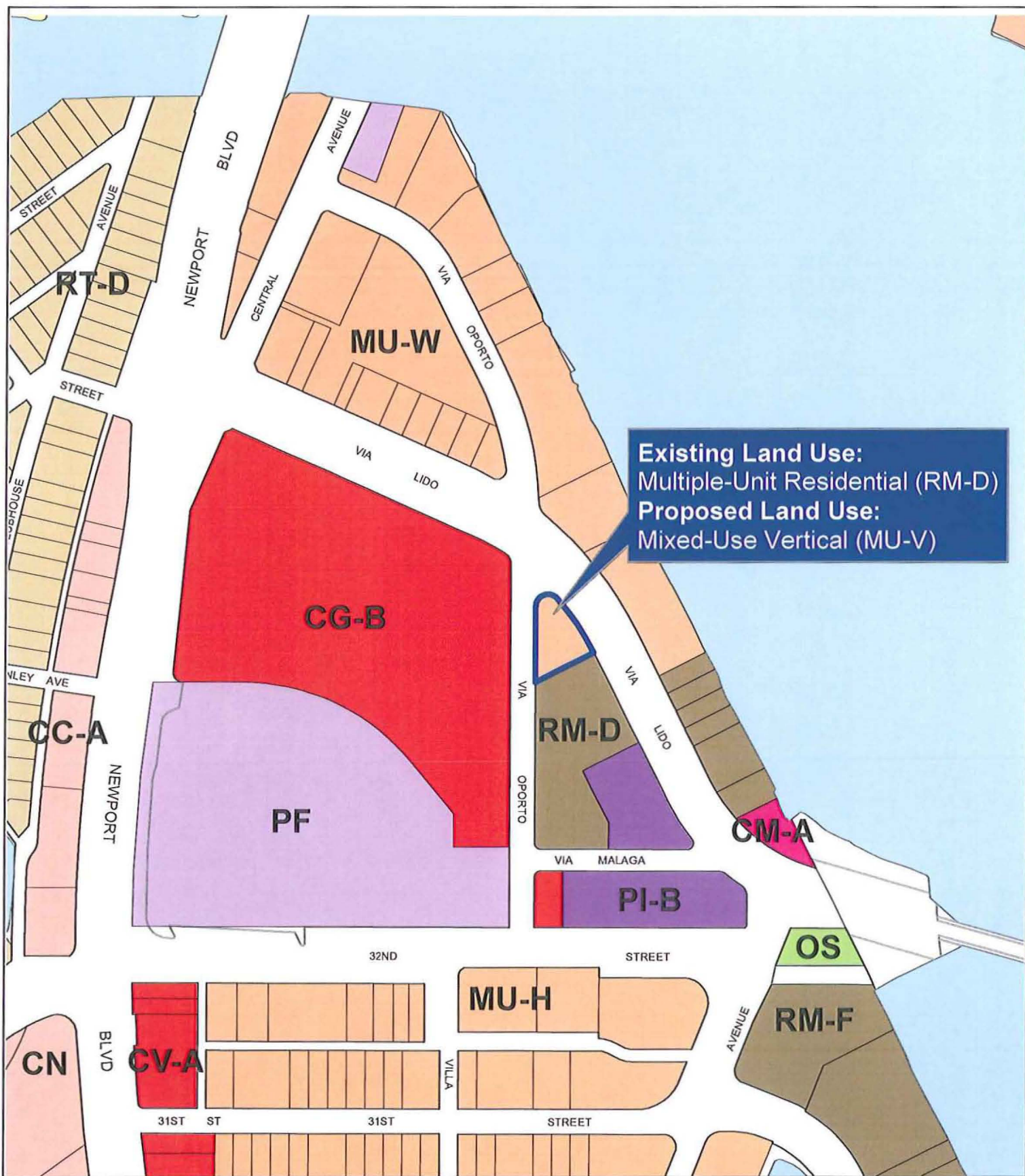
Existing and Proposed Land
Use Designations



GP2011-003 (PA2011-024)
 General Plan Amendment
 3363, 3369, and 3377 Via Lido
 & 3378 Via Oporto

0 125 250 Feet

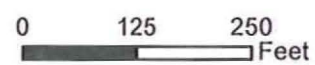


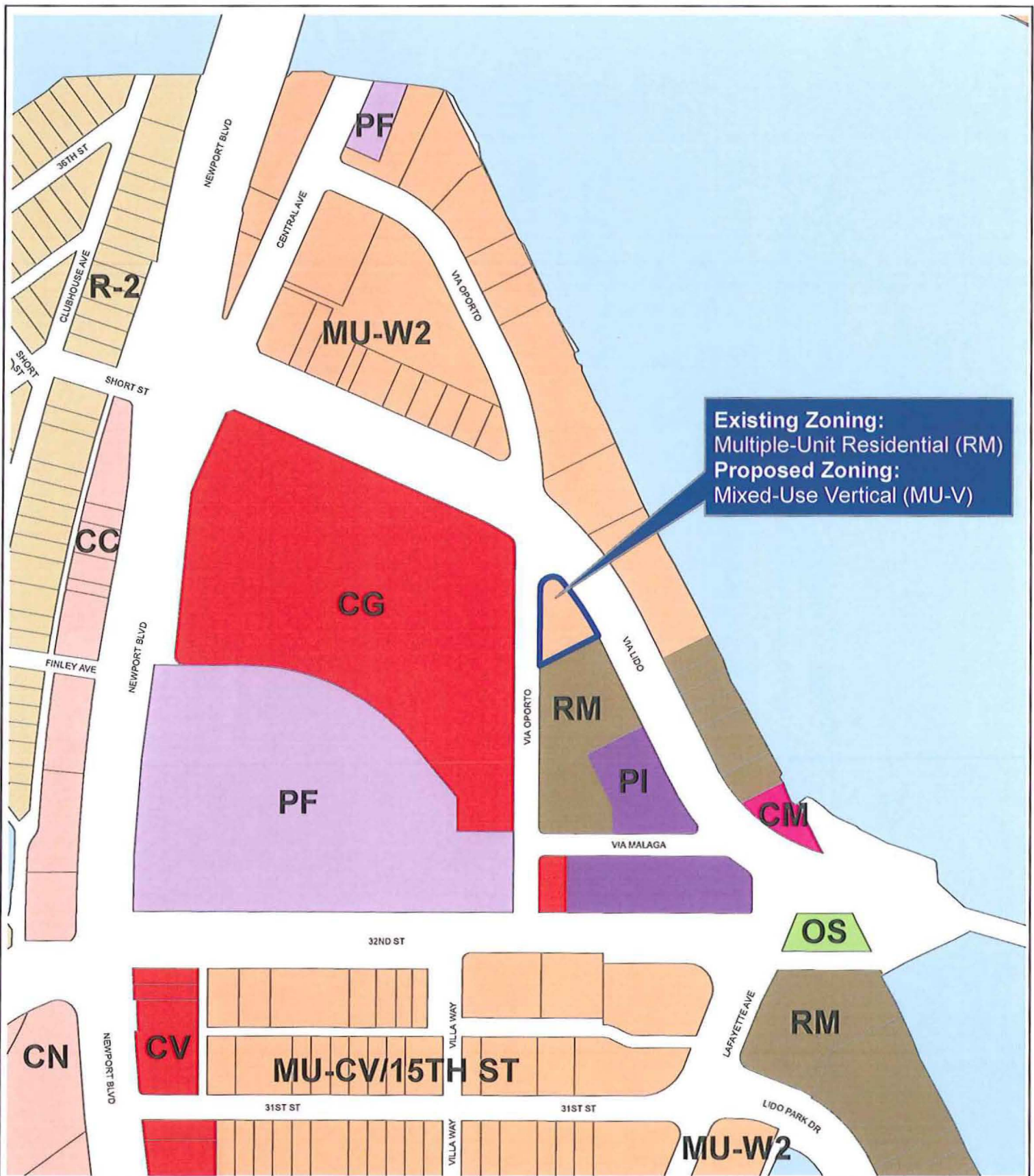


Existing Land Use:
Multiple-Unit Residential (RM-D)
Proposed Land Use:
Mixed-Use Vertical (MU-V)



LC2011-002 (PA2011-024)
Coastal Land Use Plan Amendment
 3363, 3369, and 3377 Via Lido
 & 3378 Via Oporto





CA2011-005 (PA2011-024)
Zoning Code Amendment
 3363, 3369, and 3377 Via Lido
 & 3378 Via Oporto

0 125 250 Feet



NEWPORT
Info
 NEWPORT INFORMATION BY DISTRICT

Attachment No. PC 2
Section 423 Analysis Table

04/26/2011

Page 1 of 1

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

May 5, 2011 Meeting

Agenda Item 4

SUBJECT: Pemstein Residence Minor Use Permit and Variance - (PA2010-173)
2430 Holiday Road

- Minor Use Permit No. UP2010-040
- Variance No. VA2011- 005

APPLICANT: Harold Pemstein

PLANNER: Erin M. Steffen, Planning Technician
(949) 644-3234, Esteffen@newportbeachca.gov

PROJECT SUMMARY

A minor use permit to allow for the retention of an as-built second dwelling unit converted to a senior accessory dwelling (granny) unit and two related variances to allow for 1) the construction of a garage addition to encroach 2 feet into the easterly 10-foot side setback and 2) to retain an as-built 8-foot high wall that encroaches into the 10-foot required easterly side setback.

The application also includes nine (9) other variance requests to allow for the retention of the following as-built structures:

1. An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
2. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
3. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
4. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
5. A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the maximum permitted height to 42 inches.

6. An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the maximum permitted height to 6 feet.
7. An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the maximum permitted height to 6 feet.
8. An 8-foot 3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the maximum permitted height to 6 feet.
9. A 129-square-foot (footprint of 148 square feet under roof), 11-foot 4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the maximum permitted height to 6 feet.

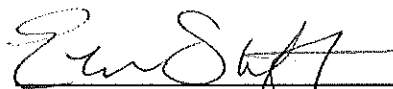
The application also indicates the existence of an 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet. The applicant has indicated that this arbor will be removed. Therefore, it is not included in the variance request.

RECOMMENDATION

Staff is requesting that the Planning Commission continue this item to May 19, 2011, so that further analysis and concerns can be addressed.

Prepared by:

Submitted by:


Erin Steffen, Planning Technician


James Campbell, Acting Planning Director

Burns, Marlene

From: Olson, Gaylene
Sent: Thursday, May 05, 2011 4:21 PM
To: Burns, Marlene
Subject: FW: 3520 E Coast Hwy Dumpster Area
Attachments: IMAG0403.jpg; IMAG0463.jpg; IMAG0464.jpg; IMAG0476.jpg

Marlene,

I am not sure what you want to do with these. I email to Planning Commissioners and made hard copies for the meeting.

Gaylene Olson

City of Newport Beach

Community Development Department
Planning Division-Department Assistant
3300 Newport Blvd
Newport Beach, CA 92663
(949) 644-3225 - phone
(949) 644-3229 - fax
www.newportbeachca.gov

From: Dan Purcell [<mailto:dan@indexstreet.com>]
Sent: Thursday, May 05, 2011 3:02 PM
To: Olson, Gaylene
Cc: Garciamay, Ruby
Subject: 3520 E Coast Hwy Dumpster Area

Hi Gaylene:

Would you mind forwarding this email to planning commissioners? I would like to address this topic during public comments at tonight's meeting. I am bypassing code enforcement on this because of the murky issues with the shared parking and dumpsters linked to use permits at both properties. The commissions are familiar with the verbal arrangement.

One of the most blight-appearing areas in Corona del Mar

This is the dumpster area shared by Landmark Steakhouse and Rose's Bakery in Corona del Mar. The area appears as pictured for a good portion of every Monday. The property managers are different and two different waste management providers are used. I separate service provider is tasked with cleaning the dumpster area and surrounding property.

The pickup truck filled with leaking bottles behind Landmark is a regular weekend occurrence.

Thanks,
Dan Purcell
Corona del Mar







